



1944

Continuance of World Court Recommended

North Dakota State Bar Association

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tee of judges, lawyers, government officers, and teachers of law. but even that committee was, in effect, a conduit through which judges, prosecutors, attorneys, government officials and others interested in the functioning of criminal justice, throughout the length and breadth of the land, could present their problems and make known their needs. No thoughtful proposal failed of a hearing. As the final product had to be reasonably acceptable to all concerned, every worthy suggestion was fully considered and every essential right carefully protected.

We have, therefore, a code of criminal procedure imposed neither by legislature nor by court—but originating from every informed source, scrutinized and passed upon by the committee, accepted by the Supreme Court, and finally submitted to the Congress. It is an admirable example of the democratic process within the legal profession.

(Extract from May, 1945 Number American Bar Association Journal)
By Homer Cummings

CONTINUANCE OF WORLD COURT RECOMMENDED

The Committee of Jurists representing the United Nations, in session in Washington during the week of April 9, voted to recommend to the San Francisco Conference that the principal tribunal of the judicial branch of the general international Organization should be a continuation, with an extension of the jurisdiction, of the present Permanent Court of International Justice as well as of the existing Statute of the Court with necessary modifications.

This is a primary goal toward which the Canadian and American Bar Associations have jointly striven for many months. Many details of the Joint Statement of the two Bar Associations have been approved for drafting and submission in the Statute. Variances seem likely on a few points, but the main objectives prevail.

We earnestly hope and pray that this basic recommendation will be adopted as a part of the Charter of the Golden Gate.

(From May, 1945 Number American Bar Association Journal)

OUR SUPREME COURT HOLDS

In *Northern Pacific Railway Company, a corporation, Applt., vs. S. S. McDonald, et al.*, as members of the Public Service Commission of the State of North Dakota, John O. Hanson, Midnite Express, Inc., a corporation, Earl Fox and B. E. Persinger, Respts.

That under the provisions of Sections 49-1807 and 49-1810 the Public Service Commission may grant a special common motor carrier permit authorizing the holder to serve the inhabitants of territory described in the permit by transporting for them goods of the character specified in the permit in less-than-truckload lots, to places outside of the territory, or to bring for them such goods from places outside of the territory.

That the questions of public convenience and necessity, and of inadequacy of existing transportation facilities, are primarily within the jur-

isdiction of the commission to determine from the evidence introduced and when the preponderance of the evidence sustains the findings of the commission the judgment will be affirmed.

Appeal from the District Court of Sheridan County, Hon. R. G. McFarland, Judge.

AFFIRMED. Opinion of the Court by Burr, J. Christianson, Ch. J. and Burke and Morris, JJ. concur specially.

In W. H. Stutsman, Pltf. and Respt., vs. Max Smith and John Klein, Defts. and Appls. ,

That where certificates of tax sale issued to a county, erroneously stated that the county was entitled to a deed one day short of the statutory period but no steps were taken looking to the termination of the owner's right of redemption until more than seven years after the maturity of the certificates, no prejudice to the original owner resulted from the error and he cannot rely upon it to defeat the county's title.

That the provisions of ch. 235, Sess. Laws N. D. 1939, relating to the manner of terminating the right of redemption of the owner of property sold to the county for delinquent taxes, applies to all tax proceedings initiated subsequent to its effective date and prior to the effective date of ch. 286, S. L. N. D. 1941.

That tax deeds issued in the name of the county auditor as grantor to the county as grantee are void.

That where the statutory proceedings for terminating the owner's right of redemption to land sold to the county on tax sale were followed, title passed to the county in the absence of redemption although no valid tax deed was issued.

That a void tax deed does not import verity of the proceedings leading up to its issuance.

That where in the course of tax deed proceedings a county auditor issues and serves a notice of expiration of redemption, valid on its face, wherein the amounts of subsequent taxes, penalty and interest lawfully included, are stated separately as to each year and the notices are introduced in evidence without challenge to the correctness of the amounts and there is nothing in the record to indicate that they are not correct, the amounts so stated will be presumed to be correct on a trial de novo in this court.

That the failure of the county auditor to include publication costs in the notice of expiration of the period of redemption mailed to the land owner under the provisions of ch. 235, Sess. Laws N. D. 1939, while including such costs in the amount set forth in the published notice does not invalidate the proceedings where no attempt was made to redeem and no prejudice is shown.

That in order to effect a redemption under the provisions of ch. 235, Sess Laws N. D. 1939, the redemptioner must pay subsequent taxes, penalty and interest upon certificates that have been issued to the county more than three years prior to the issuance of the notice of expiration of the period of redemption and such subsequent taxes should be included in the notice.

That a former owner of real property which the county has acquired title by tax proceedings who seeks to redeem or repurchase under the provisions of secs.18 and 19, ch. 285, Sess. Laws N. D. 1941, must pay all taxes lawfully assessed or taxed against the land and the cancellation of such taxes or assessments pursuant to the provisions of ch. 235, Sess. Laws N. D. 1939, does not relieve him from the duty to make such payment.

Appeal from the District Court of Morton County, Hon. H. L. Berry, Judge.

REVERSED. Opinion of the Court by Morris, J.

In H. B. Baeverstad, Pltf. and Applt., vs. Frederic P Reynolds as Trustee of the last will and testament of Charles Grandison Reynolds, deceased, and V. C. O'Reilly, Defts. and Respts.

That the statute, section 57-4510 of the Revised Code of 1943, being Chapter 286 of the Session Laws of 1941, which provides that in a case where one claims title to real property by virtue of a tax deed from the county, and such tax deed is assailed, "the Court shall not proceed with the trial of such action until the party assailing the validity of such deed, shall * * * deposit with the Clerk thereof, for the benefit of the party claiming title under such deed, an amount equal to the sum paid by such party * * * for the purchase of the property covered by such deed * * *," is a statute for the benefit of the one claiming title under the tax deed and may be waived by him.

That where the claimant under such tax deed moves the court to require the assailant to make such deposit and the court orders a deposit in an amount less than the amount the claimant paid to the county, and the holder under the tax deed takes no exception to the amount that has been fixed by the court, either at the time the order is made or upon the trial of the case, he is deemed to have waived further right under that statute.

That the county auditor, in issuing a notice of the expiration of the time of redemption from a tax sale of real estate sold to and held by the county, may include therein subsequent delinquent taxes, provided certificates of sale were or are deemed to have been issued for at least three years prior to the service of the said notice of expiration of the time of redemption.

That one entitled to redeem from a tax sale has the right to redeem upon the payment of the taxes for which the land was sold together with subsequent delinquent taxes on which certificates had been issued at least three years prior to the service of the notice, together with penalty, interest, and costs.

That as a pre-requisite to such redemption, one entitled to redeem from a tax sale is not required to pay subsequent delinquent taxes which have not been delinquent at least three years prior to the service of the notice.

That when the county auditor, in issuing such notice of expiration of the time of redemption from the tax sale, and specifying the amount to be paid in order to effect a redemption, includes in the statement of said taxes subsequent delinquent taxes, some of which have been delinquent less than three years prior to the service of the notice, and sets forth the sum of all these delinquent taxes in one amount without specifying the year of each delinquency so that one entitled to redeem can not tell from the notice the amount of taxes which have been delinquent for three or more years prior to the service of the notice, such notice is invalid and a tax deed issued thereon is void.

That in the case at bar the plaintiff purchased from the county land obtained by the county by means of a tax deed, and the defendant, claiming to be the owner of the land, assailed this tax deed issued to the county under which the plaintiff claimed title, and the court, under the provisions of Sec 21, Chap. 286 of the S. L. of 1941, required the defendant to make a deposit with the court of \$521.55 for the benefit of the plaintiff and as reimbursement for the amount he had paid the county for the land; otherwise the trial would not proceed. It is held: That though the plaintiff failed to establish his title to the land involved, because of the invalidity of the tax deed issued to the county, nevertheless he was entitled to the amount deposited by the assailant of the deed as reimbursement for the amount plaintiff had paid to the county for the lands and the judgment should require the clerk to deliver this deposit to the plaintiff.

Appeal from the District Court of Tower County, North Dakota, Hon. G. Grimson, Judge.

AFFIRMED AFTER MODIFICATION.

Opinion of the Court by Burr, J., Christianson and Burke, J. J, dissent in part.